

IBM Docket No. PO920000107US1 Examiner M.
Dimyan



(B) REMARKS

The Affidavits and their Exhibits were submitted with the prior Amendment along with these remarks.

The examiner's remarks on the phone January 26, 2005 have been taken into account in
5 preparing the two appended affidavits under Rule 1.131 (37 CFR)

The changes suggested by the Examiner have been made by this amendment.

Reconsideration of the application in light of these affidavits is respectfully requested as the reference to "Hwang" critical to the examiner's ground of rejection is not an applicable reference.

- 10 As evidenced by the Declaration papers filed with this application, this application was completed in March 2001 and ready for filing as evidenced by the signatures of inventors Brian W. Curran, Lisa Bryant Lacey and Gregory A. Northrup in March 2005. The other two inventors, Ruchir Puri and Leon Stok signed the Declaration in this application just days after any publication at a proceeding in Taiwan of a paper called by the Examiner "Hwang, W. Et Al.
- 15 Performance Analysis of Tapered Gate in PD/SOI CMOS Technology", Proceedings of Technical Papers, 2001 International Symposium of VLSI Technology, Systems and Applications, April 18-20, 2001 pp. 287-290", named as Reference U in the Notice of References Cited in the outstanding Office Action and given the short name of "Hwang" in the Office Action.
- 20 This reference "Hwang" is critical to the allegations made by the examiner under 35 USC 103(a) In the official action, and since this paper, authored in part by one of the inventors of this application, Brian W. Curran, is not useable as a reference, because, as shown by the appended affidavits, the invention under Rule 1.131 (37CFR) was conceived as shown by the application's completed status on March 14, 2001 as evidenced by the signature of Brian W. Curran on the
- 25 application's Declaration on that date, and the applicants diligently worked to obtain signatures needed for filing in a short time, as evidenced by the signatures of other inventors within the next 40 days coupled with the final filing just days after the possible publication of the "Hwang" citation as shown by the declaration documents filed with this application.

- Furthermore, even before the completion of the application specification claims and drawings
- 30 actually filed as this application, the invention was conceived and actually reduced to practice, as shown by the appended affidavit of Brian W. Curran and Lisa Bryant Lacey, and by the additionally corroborating affidavit of Yiu-Hing Chan, Design Engineer at International Business Machines Corporation, Poughkeepsie, New York showing actual use of the claimed invention well before April, 2001 for the synthesis of an working device for testing and proving the process
 - 35 claimed worked.

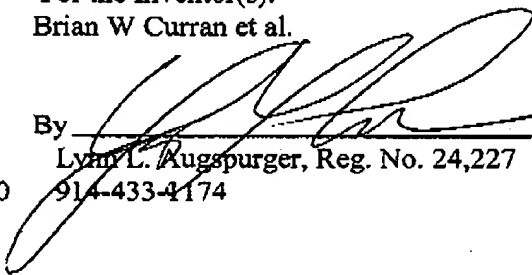
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In light of these affidavits it is established that the invention claimed was conceived and actually reduced to practice prior to the effective publication date of the "Hwang" reference, and, also that the invention was conceived prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing of the application which occurred only a
40 few days after the earliest date that the foreign reference may have been published, such that under 37 CFR 1.131 the "Hwang" reference is not an applicable reference in this application.

Therefore, the Examiner is requested to reconsider this application and since there is nothing in applicable references which could be used even in hindsight to show the inventions claimed.

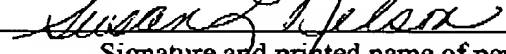
45 Respectfully Submitted,
For the Inventor(s):
Brian W Curran et al.

By  Date: March 28 __, 2005
Lynn L. Augspurger, Reg. No. 24,227
50 914-433-4174

CERTIFICATE OF FACSIMILE UNDER 37 CFR 1.8(a) / UNDER 37 CFR 1.10

I, the undersigned, hereby certify that the foregoing document to which this certificate is attached is being filed by Facsimile to to (703) 872-9306 on March 28, 2005 to Examiner Magid Y. Dimyan, Group 2825, at 703-873-9306.

55 For Lynn L. Augspurger, Attorney of Record

Mailed by:  Susan L. Nelson
Signature and printed name of person mailing documents.